

DEC 16 2008

Board of Vocational Nursing
and Psychiatric Technicians

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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF VOCATIONAL NURSING**
11 **AND PSYCHIATRIC TECHNICIANS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. VN-2007-355

14 **GEMMA JOHNSTON aka GEMMA GILL**
2835 Bayshore Ave.
15 Ventura, CA 93001

A C C U S A T I O N

16 Vocational Nurse License No. VN 202161

17 Respondent.

18 Complainant alleges:

PARTIES

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
21 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

22 2. On or about December 30, 2002, the Bureau of Vocational Nursing and
23 Psychiatric Technicians (Bureau) issued Vocational Nurse License No. VN 202161 to Gemma
24 Johnston aka Gemma Gill (Respondent). The license was automatically revoked, the revocation
25 was stayed, and Respondent was placed on three (3) years probation subject to certain terms and
26 conditions. The probation term was completed effective December 22, 2005. The Vocational
27 Nurse License was in full force and effect at all times relevant to the charges brought herein and
28 will expire on November 30, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 22 states:

"(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'"

5. Section 101.1, subdivision (b), states:

"(1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.

"(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department."

6. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under

1 section 2892.1, the Bureau may renew an expired license at any time within four years after the
2 expiration.

3 7. Section 150 states: "The department is under the control of a civil
4 executive officer who is known as the Director of Consumer Affairs."

5 8. Section 477 states:

6 As used in this division:

7 "(a) "Board" includes "bureau," "commission," "committee," "department,"
8 "division," "examining committee," "program," and "agency."

9 "(b) "License" includes certificate, registration or other means to engage in a
10 business or profession regulated by this code."

11 9. Section 490 provides, in pertinent part, that the Board may suspend or
12 revoke a license when it finds that the licensee has been convicted of a crime substantially related
13 to the qualifications, functions or duties of a licensed vocational nurse.

14 10. Section 2875 provides, in pertinent part, that the Board may discipline the
15 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
16 section 2875) of the Vocational Nursing Practice Act.

17 11. Section 2878 states, in pertinent part:

18 "The Board may suspend or revoke a license issued under this chapter [the
19 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

20 "(a) Unprofessional conduct, which includes, but is not limited to, the
21 following:

22

23 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violating of, or conspiring to violate any provision or term of this chapter.

25

26 "(f) Conviction of a crime substantially related to the qualifications, functions,
27 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
28 conclusive evidence of the conviction. . . ."

12. Section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

.....
"(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

"(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement. . . ."

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 2521, states:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. . . ."

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COST RECOVERY

14. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Convictions)

15. Respondent is subject to disciplinary action under Sections 490 and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a licensed vocational nurse, which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare. The convictions are as follows:

a. On or about January 8, 2008, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [driving while having a 0.08% or higher blood alcohol] in the criminal proceeding entitled *The People of the State of California v. Gemma Johnston* (Super. Ct. Ventura County, 2007, No. 2007041778MA). Based on Respondent's admission, the the Court found true the special allegation of violating Vehicle Code section 23578 [driving with a blood alcohol of 0.15% or more]. The Court sentenced Respondent to 48 hours in jail and 36 months probation. She was also ordered to attend a Drinking Driver Program for multiple offenders and to pay \$2,875 in fees, fines and penalties. The circumstances underlying the conviction are that California Highway Patrol officers arrested Respondent after a routine traffic stop of her vehicle and she failed field sobriety tests on or about November 3, 2007.

b. Also, on or about January 8, 2008, after pleading guilty, Respondent was convicted of a misdemeanor count of violating Vehicle Code section 23152(b) [driving while having a 0.08% or higher blood alcohol] in the criminal proceeding entitled *The People of the State of California v. Gemma Johnston* (Super. Ct. Ventura County, 2007, No. 2007028741MA).

1 Based on Respondent's admission, the Court found true the special allegation of violating
2 Vehicle Code section 23578 [driving with a blood alcohol of 0.15% or more]. The Court
3 sentenced Respondent to 36 months probation, and ordered Respondent to attend a Drinking
4 Driver Program for multiple offenders and to pay \$2,841 in fees, fines and penalties. The
5 circumstances underlying the conviction are that the California Highway Patrol officers arrested
6 Respondent after a routine traffic stop of her vehicle and she failed field sobriety tests on or
7 about July 28, 2007.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Alcohol-Related Crimes)**

10 16. Respondent is subject to disciplinary action under Section 2878,
11 subdivision (a), in conjunction with Section 2878.5, subdivision (c), in that on or about January
12 8, 2008, she was convicted of two (2) separate crimes involving her consumption of alcohol.
13 Complainant refers to and by this reference incorporates the allegations set forth in paragraph 15,
14 subdivisions (a) - (d), inclusive, above, as though set forth fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 17. Respondent is subject to disciplinary action under Section 2878,
18 subdivision (a), in conjunction with Section 2878.5, subdivision (b), in that on or about July 28,
19 2007, and on or about November 3, 2007, Respondent used alcoholic beverages, to an extent or
20 in a manner dangerous or injurious to herself and others when she drove a vehicle in violation of
21 the law. Complainant refers to and by this reference incorporates the allegations set forth in
22 paragraphs 15, subdivisions (a) - (d), and 16, inclusive, above, as though set forth fully.

23 **DISCIPLINE CONSIDERATIONS**


24 18. To determine the degree of discipline, Complainant alleges that effective
25 on or about December 22, 2002, in a prior disciplinary action entitled *In the Matter of the*
26 *Statement of Issues Against Gemma Gill*, Case No. 6433, before the Bureau, the Bureau issued
27 Respondent a probationary license for a period of three (3) years, subject to certain terms and
28 conditions. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director issue a decision:

1. Revoking or suspending Vocational Nurse License No. VN 202161, issued to Respondent;
2. Ordering Respondent to pay the Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: December 16, 2008


TERESA BELLO JONES, J.D., M.S.N., R.N.
Executive Officer
Bureau of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California

Complainant

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